

Appl. No. : 10/790671  
Filed : March 1, 2004

## REMARKS

### Status of Claims

Claims 11-23 are currently under review. Claims 1-10 were withdrawn in response to a previous restriction requirement. In this amendment, Claims 1-10 have been canceled without prejudice.

### Abstract

The Abstract has been amended to correct the informality noted by the Examiner. A substitute Abstract is being provided with this amendment.

### Drawings, Specification and Rejections under 35 U.S.C. 112

The Examiner has objected to the drawing for not showing the following features recited in the claims: the palm engagement portion, first component, second component, inner component, outer component, first actuator, second actuator, and the connection between each feature.

The Specification has also been objected to for not supplying proper an antecedent basis for the claims subject matter. The Examiner required correction regarding the following phrases: "palm engagement portion, first component, second component, finger engagement portion, outer component, inner component, first actuator and second actuator.

The Examiner has also rejected claims 11-23 under 35 U.S.C. 112, second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner indicates that the following limitations were unclear: "palm engagement portion", "first component", "second component", "finger engagement portion", "outer component", "inner component", "first actuator", and "second actuator".

Applicant respectfully submits that Applicant has merely used in the *original claims* words that do not match those used in the specification and disclosure. As set forth below, this is permissible.

The mere fact that a term or phrase used in the claim has no antecedent basis in the specification disclosure does not mean, necessarily, that the term or phrase is indefinite. There is no requirement that the words in the claim must match those used in the specification disclosure. Applicants are given a great deal of latitude in how they choose to define their invention so long as the terms and phrases used define the invention with a reasonable degree of clarity and precision. MPEP 2173.05(e)

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Nevertheless, the Specification has been amended herein to provide specific antecedent basis for the terms used in the original claims.

The Examiner has also objected to the disclosure because of an error in describing the priority of the application. The Specification has been amended to correct this typographical error.

### **Claim Rejections**

The Examiner has rejected Claims 11, 13, and 19-21 as being anticipated by Larsen et al (US 5,993,459). In order to anticipate a claim, a reference must teach each element of the claim. A difference between the Larsen installation tool and the claimed invention is that the Larsen tool is configured such that proximal movement of the trigger portion (220) with finger rests (221) relative to the handle (240), results in the inner shaft (230) extending distally in relation to the outer tube (210). *See* Col. 9, lines 4-10. In this manner, the suture anchor 210 is advanced into the hole 283 in the bone. *Id.*

In contrast, in the illustrated embodiments of the present application, proximal movement of the finger engagement portion/first actuator relative to the palm engagement portion/second actuator results in proximal retraction of the inner component relative to the outer component. This difference is structurally achieved because the outer component/ first component is coupled to the palm engagement portion, wherein in Larsen it is coupled to the trigger portion.

Thus, with regard to the Claim 11 Larsen does not teach “said tensioner being configured to proximally withdraw an elongate body of the bone fixation device with respect to the proximal anchor which is carried by the elongate body as the at least one finger engagement portion is moved towards the palm engagement portion”. And with regard to Claim 19, Larsen does not teach “and the inner component is removably coupled to the elongate body and configured such that proximal movement of inner component with respect to the outer component proximally withdraws the elongate body with respect to the proximal anchor.” Therefore, since all of the elements of the claims are not taught by the cited reference, the reference cannot anticipate the claims and the rejection should be withdrawn.

### **Requirement for Information**

Applicant respectfully requests that the Examiner disregard the continuation-in-part priority claims to U.S. Patent Application No. 6,511,481 and U.S. Patent No. 6,890,3333.

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Applicant reserves the right to claim priority to these applications later in prosecution or in a continuing application.


### CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections are respectfully requested. Allowance of the claims at an early date is solicited. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

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AMEND

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